

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

SAUL FALCON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 5:08-CV-9037-HL

28 U.S.C. § 2255

CASE NO. 5:07-CR-16-HL

ORDER

This case is before the Court on the Report and Recommendation (Doc. 529) of United States Magistrate Judge G. Mallon Faircloth on the parties' Joint Motion for Recommendation (Doc. 528). Petitioner Saul Falcon also has a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 508) pending before the Court.

Based on the parties' stipulations in the Joint Motion, the Magistrate Judge has recommended that this Court enter an order setting aside Petitioner's judgment of conviction and instantanter reinstating the same effective as of the date of reinstatement, for the sole purpose of allowing Petitioner the opportunity to file a notice of appeal of the reinstated judgment of conviction pursuant to Federal Rule of Appellate Procedure 4(b). He has also recommended that the Court dismiss Petitioner's pending § 2255 motion without prejudice so Petitioner may re-file a § 2255 motion following his appeal.

After due consideration, the Court adopts the Report and Recommendation. Petitioner's judgment of conviction (Doc. 429) is vacated, but immediately reinstated as of the date of this Order on the same terms previously entered. Petitioner shall have the opportunity to file a notice of appeal of this reinstated judgment of conviction as provided in Fed. R. App. P. 4(b). In addition, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 508) is dismissed without prejudice, and the Joint Motion for a Recommendation (Doc. 528) is granted.

SO ORDERED, this the 13th day of August, 2009.

s/ Hugh Lawson _____

**HUGH LAWSON
UNITED STATES SENIOR JUDGE**

mbh